

CONTRACT #10
RFS # 317.04-064

**Department of Finance &
Administration
Division of Insurance
Administration**

VENDOR:
**Fort Dearborn Life Insurance
Company**



RECEIVED

MAY 10 2007

FISCAL REVIEW

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
INSURANCE ADMINISTRATION

312 Eighth Avenue North
Suite 2600 William R. Snodgrass Tennessee Tower
Nashville, Tennessee 37243
FAX (615) 253-8556

Dave Goetz
COMMISSIONER

Richard Chapman
EXECUTIVE DIRECTOR

MEMORANDUM

To: James White, Executive Director, Fiscal Review Committee

From: Richard Chapman 

Date: May 9, 2007

RE: Late Request for a Contract for Underwriting Services for AccessTN applicants

Please find attached a Non-Competitive Contract request for a contract with Fort Dearborn Life Insurance Company signed by Commissioner M. D. Goetz. The contract is included and the scope of services details the responsibilities for the provision of underwriting and administrative services for applicants for the AccessTN program for specified individuals who were disenrolled from TennCare or who initially applied for AccessTN in a basis other than underwriting.

As the start date for accepting applications for AccessTN was early in March, 2007, the Contractor is currently providing this service for individuals applying for AccessTN through the underwriting option and paying the processing fee. All fees paid for the services provided through the scope of services will be paid to the Contractor by the State for the specified individuals making an application to AccessTN who have been referred to the Contractor by the plan administrator. The Division of Insurance Administration is seeking to enter into this separate contract to ensure the underwriting services are provided.

The services under this contract have been approved by the Access Tennessee Board of Directors. The contract reflects actions taken by the Board in the early stages of implementation of AccessTN and with implementation starting in early March did not allow for the 60 days prior to this request for the submission of the contract document.

Thank you for your consideration of this request.



**STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
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Dave Goetz
COMMISSIONER

Richard Chapman
EXECUTIVE DIRECTOR

MEMORANDUM

TO: Commissioner M. D. Goetz, Jr.
FROM : Richard Chapman *Richard Chapman*
DATE: May 9, 2007
RE: Contract for Underwriting Services for AccessTN applicants

This is to request a start date for the Fort Dearborn Insurance Company contract with a scope of services to provide underwriting evaluation services for identified individuals applying for AccessTN referred by the plan administrator. The specified individuals were either disenrolled from TennCare or have applied on a basis other than underwriting in their initial application. This request is in advance of 60 days after the receipt of the non-competitive contract request provided to you for your approval.

This contract will allow Fort Dearborn to provide underwriting and administrative services for individuals making an application for AccessTN with the payment for the service to be paid by the State as a Service Fee. With the pending May 1, 2007 start date, speed of implementation is in the best interest of the State.

Thank you for your consideration of this request.

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	317.04-064	
2) State Agency Name :	F&A – Division of Insurance Administration	
3) Service Caption :	Underwriting and administrative services for AccessTN applicants.	
4) Proposed Contractor :	Fort Dearborn Life Insurance Company	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	May 1, 2007	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	December 31, 2009	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$340,000	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :		
This contract with Fort Dearborn will provide underwriting services for individuals who have applied for AccessTN who were disenrolled from TennCare or who applied on a basis other than underwriting in their initial application.		
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :		
<p>There are three ways an individual may become eligible for AccessTN. They could have one of 55 qualifying conditions, or they could be in possession of two denial letters from insurance providers or they could elect to submit medical information for underwriting from Fort Dearborn Insurance Company. Currently, the individual is responsible for the costs of the underwriting services.</p> <p>Some individuals applying for AccessTN on a basis other than underwriting are initially not qualifying due to not having one of the pre-determined conditions. Their overall health situation would likely qualify these individuals if they had sought eligibility through the underwriting option. Further, those individuals disenrolled from TennCare may lack the financial resources to pay the associated fee with the underwriting process.</p>		
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :		
Currently, Fort Dearborn performs this service under a no cost agreement to the State for those applying and paying the underwriting fee. Fort Dearborn also performs a similar service for the State sponsored, public sector plans through a competitive RFP process.		

12) Name & Address of the Proposed Contractor's Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Fort Dearborn Life Insurance Company, 1020 31st Street. Downers Grove, IL 60515

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

This contractor has served in this capacity for the State Plans since January 1, 2004 and has been a very satisfactory vendor for the services required.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

This contractor has performed this function for the State since Jan. 2004 and the amount of the proposed contract is dependent on the number of individuals seeking this service from Fort Dearborn. At this time, it is in the best interest of the State to proceed with this vendor. This action has been approved by the Access Tennessee Board of Directors.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

Performance of this vendor is quite satisfactory and the magnitude of need for the services for applications for AccessTN remains unknown. This process will be used by those who were disenrolled from TennCare on or after August, 2005 and those who have been denied eligibility for not having one of the 55 conditions. This same provider is performing this service for those initially seeking underwriting services as a determination of eligibility for AccessTN and will ensure consistency in the application of underwriting procedures for all applicants.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

Agency Head Signature

Date

C O N T R A C T S U M M A R Y S H E E T

060706

RFS #				Contract #			
317 . 04 — 064 — 07				FA — 07 — —			
State Agency				State Agency Division			
Finance and Administration				Division of Insurance Administration			
Contractor Name				Contractor ID # (FEIN or SSN)			
Fort Dearborn Life Insurance Company				<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V-			
Service Description							
To provide underwriting and administration services for the Cover Tennessee Plan known as AccessTN.							
Contract Begin Date		Contract End Date		SUBRECIPIENT or VENDOR?		CFDA #	
May 1, 2007		December 31, 2009					
Mark Each TRUE Statement							
<input type="checkbox"/> Contractor is on STARS				<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code		Cost Center	Object Code	Fund	Funding Grant Code		Funding Subgrant Code
317.04		40	083	11			
FY	State	Federal	Interdepartmental	Other		TOTAL Contract Amount	
2007			\$40,000.00	\$0.00		\$40,000.00	
2008			\$120,000.00	\$0.00		\$120,000.00	
2009			\$120,000.00	\$0.00		\$120,000.00	
2010			\$60,000.00	\$0.00		\$60,000.00	
TOTAL:			\$340,000.00	\$0.00		\$340,000.00	

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Maureen Abbey, 20th Floor, Tennessee Tower 312 8 th Avenue, North Nashville, TN 37243 615-741-6070	
			State Agency Budget Officer Approval 	
			Funding Certification (certification, required by T.C.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
TOTAL:				
End Date:				

Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR)				
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> NOT minority/disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)				
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method		
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (e.g., ID, GG, GU)	<input type="checkbox"/> Other		
Procurement Process Summary (complete for selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)				
The contractor was selected based on past performance under a separate contract with the Division of Insurance and the fact that the number of applicants seeking the underwriting service is currently limited to specific categories of individuals.				

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
FORT DEARBORN LIFE INSURANCE COMPANY**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and Fort Dearborn Life Insurance Company, hereinafter referred to as the "Contractor," is for the provision of underwriting and administration for the Cover Tennessee Plan known as AccessTN, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

The Contractor's Vendor Identification Number (FEIN) is 36-2598882.

The Contractor's address is:

1020 31st Street

Downers Grove, IL 60515

The Contractor's place of incorporation or organization is Illinois.

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Underwriting and Administrative Services for AccessTN Applicants

A.2.1. The Contractor shall provide underwriting and administrative services for individuals making an application for AccessTN. The Contractor will perform the underwriting process in a manner consistent with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

A.2.2. The Contractor shall receive information from the Plan Administrator and shall communicate their determination regarding eligibility to the Plan Administrator.

A.2.3. The Contractor shall develop an internal appeal process regarding eligibility determination that shall be subject to the review and comment by the State. The Contractor shall participate in Access Tennessee Board review of eligibility determinations.

A.2.4. The individuals shall be identified based upon guidelines provided by the AccessTN Board which may be modified periodically by written notification to the Contractor.

A.2.4.1. Specified individuals include:

a) individuals disenrolled from TennCare on or after August, 2005 and identified as such by the State or the AccessTN Plan Administrator.

b) individuals who applied for AccessTN on a basis other than medical underwriting (including but not limited to Physician Statement or Insurer Declination letter) but for whom the State has determined it is appropriate to review the individual's health history for medical underwriting.

A.2.4.2. Specified individuals shall be responsible for providing any additional medical records requested by the Contractor, at their own expense, except as specified by the State in writing to the Contractor. Failure of the individual to provide such records within the time provided by AccessTN policies shall be a basis for closure of the application file, and written notification to the Plan Administrator of the closure.

A.2.4.3. The State shall provide thirty (30) days written notice, as agreed by the parties, to the Contractor to modify the categories of applicants in A.2.4.1 above.

- A.2.5. The Contractor shall make quarterly reports to the State detailing at a minimum, the number of applications received and processed.

B. CONTRACT TERM:

- B.1. This Contract shall be effective for the period commencing on May 1, 2007 and ending on December 31, 2009. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total Contract term of no more than five (5) years, provided that such an extension of the Contract term is effected prior to the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Hundred and Forty Thousand Dollars (\$340,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

Service	Amount
Provision of underwriting services per application	\$75.00

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract or any amendment thereof until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or

consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon

reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Ms. Marlene D. Alvarez, Manager of Procurement and Contracting
Department of Finance and Administration, Division of Insurance Administration
26th Floor, William R. Snodgrass Tennessee Tower
312 Eighth Avenue North
Nashville, TN 37243
Email Address: marlene.alvarez@state.tn.us
Telephone: 615-253-8358
Fax: 615-253-8556

The Contractor:

Ms. Maria Suarez, Manager of Broker Relations
Fort Dearborn Life Insurance Company
1020 31st Street
Downers Grove, IL 60515
Email Address: Maria_Suarez@fdlic.com
Phone: 972-996-9294
Fax: 972-996-9371

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.

E.5. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.8. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.9. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of

services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- E.10. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.11. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- E.12. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if

information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

IN WITNESS WHEREOF:

FORT DEARBORN LIFE INSURANCE COMPANY:

HERM LeFEVRE, CHIEF UNDERWRITING OFFICER

DATE

PRINTED NAME AND TITLE OF AUTHORIZED CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. GOETZ, JR., COMMISSIONER

DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. GOETZ, JR., COMMISSIONER

DATE

COMPTROLLER OF THE TREASURY:

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	FA-07-
CONTRACTOR LEGAL ENTITY NAME:	FORT DEARBORN LIFE INSURANCE COMPANY
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	36-2598882

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.